

CONTEMPORARY STATE ANTI-“SLAVERY” EFFORTS: DISHONEST AND INEFFECTIVE

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Abstract: Contemporary state anti-“slavery” efforts are dishonest with respect to the types of anti-“slavery” methodologies that states implement, including the use of slavery terminology.

State anti-“slavery” efforts demonstrate three types of dishonesty: (1) the rhetorical misrepresentation to the public, and within state entities themselves, of the nature of the contemporary exploitation targeted by states; (2) hypocritical protestations of concern, coupled with the pretense that the types of initiatives that states support can succeed (this despite state failure to address the root causes and the fundamental interrelationships of the exploitation with state-supported and –implemented policies and structures); and (3) a form of willful innocence that refuses to acknowledge or deliberately ignores the interrelationships among state policies and the types of exploitation that are targeted by the anti-“slavery” initiatives.

In addition, state efforts are ineffective in addressing the types of exploitation that states purport to target. State anti-“slavery” efforts are largely ineffective because the conceptual paradigms supported by states do *not* challenge the role of states or existing modalities of wealth and resource allocation upon which they depend.

Keywords: human trafficking, slavery, modern slavery, anti-slavery, exploitation, anti-exploitation, Trafficking Protocol

PRELUDE: EXPLOITATION AND ANTI-“SLAVERY”

Toward the end of 2017, international media excitedly reported the existence of real live slave markets in Libya.¹ The reports justifiably elicited widespread and breathless expressions of horror, and condemnation of the perpetrators of the violations. However, deeper examination of the context and background of the slave markets point to state indifference to, and complicity in, their existence. For

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1. David D. Kirkpatrick, *Europe Wanted Migrants Stopped – Now Some are Being Sold as Slaves*, N.Y. TIMES, Nov. 30, 2017, <https://www.nytimes.com/2017/11/30/world/africa/slave-market-libya-european-migrants.html>; Nour Youssef, *Sale of Migrants as Slaves in Libya Causes Outrage in Africa and Paris*, N.Y. TIMES, Nov. 20, 2017, https://www.nytimes.com/2017/11/19/world/africa/libya-migrants-slavery.html?_r=0.

example, journalist David Kirkpatrick reported in the *New York Times* that: “The response from the European Union, however, has been notably muted. That may partly reflect the gratification among European Union officials over Italy’s success at reducing the influx of migrants across the Mediterranean. Italy has been helping Libyans stop them at sea or keep them in Libya, despite the dangers they face there.”² He further noted that the markets were no surprise, after all: “As early as the spring of 2015, journalists who visited migrant detention camps in Western Libya reported that the jailers routinely sold captives to local farmers or others for temporary use as laborers.”³ Human rights non-governmental organizations (NGOs) and their leaders are aware of and have expressed concerns about state roles in the Libyan crisis. Kirkpatrick reported on the expression of those very concerns from within Human Rights Watch: “The European policy ‘is looking an awful lot like complicity,’ said Judith Sunderland, a researcher for Human Rights Watch. The sale and exploitation of African migrants in Libya has been well known ‘for a very long time, frankly,’ she said.”⁴

Ivanka Trump, the daughter of the incumbent U.S. president, officially an unpaid adviser to her father, condemned “slavery” in a high-profile appearance, accompanied by anti-slavery NGOs such as the New Underground Railroad.⁵ Shortly thereafter, the production lines of one of her businesses were revealed to be participants in labor exploitation.⁶

I. INTRODUCTION

“Slavery” and anti-“slavery” rhetoric and efforts resonate strongly in the public consciousness. Throughout the world, states, inter-governmental organizations, non-governmental organizations (NGOs), and anti-slavery activists are engaged in a new, pitched war against an enemy thought to be long-vanquished. The signs and reports of these efforts are memorialized and

2. Kirkpatrick, *supra* note 2; Alissa J. Rubin & Jason Horowitz, *European Leaders Look to Africa to Stem Migration*, N.Y. TIMES, Aug. 28, 2017, <https://www.nytimes.com/2017/08/28/world/europe/africa-migrants-europe.html>.

3. Kirkpatrick, *supra* note 2.

4. *Id.*

5. Operation Underground Railroad: <https://ourrescue.org/>.

6. Keith Bradsher, *China Releases Activists Scrutinizing Ivanka Trump Shoe Factory*, N.Y. TIMES, June 28, 2017, https://www.nytimes.com/2017/06/28/business/china-labor-ivanka-trump-shoes.html?_r=0; Emily Jane Fox, *Ivanka Trump’s Two Faces of Human Rights*, VANITY FAIR, June 28, 2017, <https://www.vanityfair.com/news/2017/06/ivanka-trumps-factory-human-rights>; Betsey Klein, *Ivanka Trump delivers anti-human trafficking speech at UN*, CNN, Sept., 2017, <http://www.cnn.com/2017/09/19/politics/ivanka-trump-united-nations-human-trafficking/index.html>; Trent Toone, *Operation Underground Railroad’s Tim Ballard meets with Ivanka Trump, politicians regarding human trafficking*, DESERET NEWS, Oct. 26, 2017, <https://www.deseretnews.com/article/865691732/Operation-Underground-Railroads-Tim-Ballard-meets-with-Ivanka-Trump-politicians-regarding-human.html>; Negassi Tesfamichael, *Ivanka Trump to help State Dept. unveil human trafficking report*, POLITICO, June 26, 2017, <https://www.politico.com/story/2017/06/26/ivanka-trump-tillerson-human-trafficking-239978>.

celebrated in governmental and intergovernmental reports, glossy magazines, and celebrity-studded performances of anti-slavery zeal.⁷

In this Article, I claim that contemporary state anti-“slavery” efforts are dishonest and ineffective in addressing the exploitation that states claim to target. The dishonesty and ineffectiveness of state efforts stem from collective failure (or refusal) to acknowledge conceptually, rhetorically, and in policy implementation the complexity of the origins and nature of the forms of contemporary exploitation targeted by their anti-“slavery” efforts.

I draw inspiration for my critiques from the parable of the river. According to one version of the parable:

Imagine a large river with a high waterfall. At the bottom of this waterfall hundreds of people are working frantically trying to save those who have fallen into the river and have fallen down the waterfall, many of them drowning. As the people along the shore are trying to rescue as many as possible, one individual looks up and sees a seemingly never-ending stream of people falling down the waterfall and begins to run upstream. One of the other rescuers hollers, “Where are you going? There are so many people that need help here.” To which the man replied, “I’m going upstream to find out why so many people are falling into the river.”⁸

To effectively combat normalized human rights abuses, contemporary anti-exploitation efforts must focus on the “whys,” not only the “hows.” Anti-exploitation efforts must look upstream.

By using the image and rhetoric of slavery, coupled with affirmations of slavery’s illegality under state and international law, the state directs attention toward individual bad-guy perpetrators and away from state policies and structures that contribute to the exploitation it purports to target. The state’s rhetoric and efforts highlight “transnational organized crime” but pay little attention to the contributory roles of state policies and the international legal regime, or of powerful non-state actors, such as multinational corporations.

Ineffective methodologies proceed from the problematic diagnosis of “slavery.” The focus on the language of “slavery” and slavery’s abolition under international and domestic law appears to blind the states and their policymakers to the structural foundations (economic, political, and cultural) of extreme forms of contemporary human-to-human exploitation. The rhetoric is also convenient, as it avoids addressing Western countries’ contributions (both historic and

7. See, e.g., U.S. Dep’t of St., Bureau of Democracy, H.R. & Lab., *Trafficking in Persons Report* (2017); Walk Free Foundation, *Global Slavery Index 2016 Report* (2016); Dina Haynes, *The Celebritization of Human Trafficking*, 653(1) *Annals Am. Acad. Pol. & Soc. Science* 24-45 (2014); Kamala Kempadoo, *The Modern-Day White (W o)Man’s Burden: Trends in Anti-Trafficking and Anti-Slavery Campaigns*, 1 *J. Hum. Traff.* 8-20 (2015).

8. Randall G. Shelden & Daniel Macallair, *JUVENILE JUSTICE IN AMERICA: PROBLEMS AND PROSPECTS* (Long Grove, Illinois: Waveland Press Inc. 2007).

contemporary) to the exploitative conditions suffered by those the states claim to protect.

The dominant paradigm is one wherein the perception is that state and private party identification of perpetrators and victims, together with criminalization, disgorgement, and reporting requirements will lead to the eradication of the targeted forms of exploitation. State anti-“slavery” efforts will continue to be dishonest and ineffective until states focus on the “whys” and not just the “hows” of the exploitation, acknowledge their roles in facilitating and sustaining human trafficking and other forms of severe contemporary exploitation (“today’s slaveries”),⁹ and deploy policies and interventions that target the root causes.

Terminology

I use the formulation “state anti-‘slavery’ efforts” to signal both my skepticism of the use of the word “slavery” to describe severe forms of contemporary exploitation, and my claims that states do not effectively or wholeheartedly engage in anti-exploitation efforts. I have previously pointed out the incoherent use of the word “slavery” and that it appeared that the word was now “shorthand for a potentially infinite variety of contemporary types of exploitation and abuse.”¹⁰ I further noted a movement away from the longstanding legal understanding of the term: “slavery” is now used interchangeably with “human trafficking.”¹¹

In this Article “[t]he term ‘today’s slaveries’ invokes pluralities – of perceptions, of exploitation forms, and of meanings of the term.”¹²

The “state,” as used in this Article, refers to states in both the Global North and the Global South. Accusations of dishonesty and ineffectiveness may resonate most strongly with respect to states in the Global North that have staked out strong rhetorical anti-“slavery” positions (such as the United States of America (U.S.) and the United Kingdom (U.K.)). However, states in the Global South that adopt anti-slavery legislation and rhetoric, while failing to address fundamental causes of exploitation within their borders and spheres of influence also are appropriate subjects of such critiques. Within any individual state, the term encompasses the policies, laws, and implementation by different branches of individual governments – executive, legislative, and judicial. With respect to the international sphere, the term refers to the exercise of power outside of the borders of a state, whether through the deployment of rhetoric or of a state’s economic or military power. For states in both the Global North and Global South,

9. Karen E. Bravo, *Interrogating Everyperson’s Roles in Today’s Slaveries*, 31 TEMP. INT’L & COMP. L.J., 25, 25-43 (2017); Karen E. Bravo, *Interrogating the State’s Roles in Human Trafficking*, 25 IND. INT’L & COMP. L. REV., 9-31 (2014).

10. Bravo, *supra* note 10, at 25-43.

11. *Id.*

12. See *id.* at 28 (explaining my formulation and use of the term).

corruption of officials and the capture of state resources by national and transnational elites also lead to anti-“slavery” efforts that are dishonest and ineffective, and that rely on eye-catching and emotion-inducing anti-trafficking performances.

This Article is organized as follows: Part II provides a background and summary of the “re-discovery” of human trafficking and other contemporary forms of exploitation; explores the causes of such exploitation; and describes the principal types of state anti-“slavery” efforts. Part III addresses the nature and meanings of “dishonesty” as used in this Article, and describes the types, subjects, audiences, and methodologies of the dishonesty used by states. Part IV identifies the ineffectiveness and effects of state efforts, including an explanation of the basis of my claims of ineffectiveness. Part V offers recommendations for the adoption of anti-exploitation methodologies that will more effectively combat the targeted forms of exploitation.

II. CONTEMPORARY FORMS OF EXPLOITATION AND STATE ANTI-“SLAVERY” EFFORTS

The origins and structure of the contemporary anti-trafficking regime evidence that human rights and the protection of humans against severe forms of exploitation were not a first order of priority for state actors. State prioritization of state security interests, is evidenced by (1) the language and architecture of the United Nations (U.N.) Trafficking Protocol;¹³ (2) the decades-long, severe endemic exploitation had not elicited active state responses (such as the adoption of either domestic or international anti-exploitation action, for example);¹⁴ (3) the subordination of state attention to severe forms of exploitation, including the purchase and sale of human beings, to state attention to national security and border threats; and (4) the perception and treatment of severe forms of exploitation denominated under the term “human trafficking” as, primarily, issues of international and domestic *criminal* law, not violations of international *human rights* law. The dominant paradigm of aberrational exploitation (“slavery” and “slavery”-like practices), where the exploitation is portrayed as unusual and outside the norm, continues to obfuscate the reality that the now-targeted forms of exploitation have been and are embedded in and essential to the economics, politics, and cultures of contemporary human existence around the globe.

13. For example, according to Louise Shelley, “[the Trafficking Protocol’s definition] represents the interests of governments rather than individuals. Its focus is on border security, illegal migrants, and organized crime.” LOUISE SHELLEY, HUMAN TRAFFICKING: A GLOBAL PERSPECTIVE 10 (2010).

14. SUZANNE MIERS, SLAVERY IN THE TWENTIETH CENTURY: THE EVOLUTION OF A GLOBAL PROBLEM (2003). See fns. 22 – 29 and accompanying text *infra* for discussion of the UN Trafficking Protocol.

A. Background

Long after the nineteenth century’s legal abolition of slavery in domestic law and slavery’s prohibition under international law, severe labor and sexual exploitation continued worldwide, and were structurally integrated into economic, political, and social activities and practices, often pursuant to government sponsorship or acquiescence. Examples include labor exploitation by colonizers in Africa and India;¹⁵ re-enslavement of Blacks in the American South;¹⁶ Japan’s enslavement of “comfort women” during World War II;¹⁷ and sex tourism, including the exploitation of minors in the Philippines, Thailand, and other parts of Asia.¹⁸

The contemporary emergence into public view of severe forms of exploitation owes much to a confluence of events that raised concerns about threats to the national security of powerful states.¹⁹ Previous and coexisting exploitation of persons from the Global South was (and continues to be) inadequately explored and addressed.²⁰ Women’s rights activists and anti-slavery NGOs (such as the Anti-Slavery Society, the Minority Rights Group, and International Federation of Women Lawyers)²¹ had identified and decried ongoing forms of severe exploitation with little success: despite U.N. reports, states had done little to adopt legislative or policy changes that could effectively address the exploitation.²²

From the beginning of the modern anti-trafficking movement, state efforts were subordinate to anti-crime and border protection concerns. In the 1990s, the dissolution of the Soviet Union led, among other things, to a seeming explosion of transnational criminal activity by “Russian gangs,” and the traffic and sexual exploitation of Eastern European women to countries around the world, including to Western Europe, Israel, and the U.S., to name prominent examples.²³ Responding with alarm, under the auspices of the U.N., states negotiated, drafted, and opened for signature the U.N. Convention on Transnational

15. LOWELL J. SATRE, *CHOCOLATE ON TRIAL: SLAVERY, POLITICS & THE ETHICS OF BUSINESS* (2005).

16. DOUGLAS A. BLACKMON, *SLAVERY BY ANOTHER NAME: THE RE-ENSLAVEMENT OF BLACK AMERICANS FROM THE CIVIL WAR TO WORLD WAR II* (2009).

17. GEORGE HICKS, *THE COMFORT WOMEN: JAPANESE BRUTAL REGIME OF ENFORCED PROSTITUTION IN THE SECOND WORLD WAR* (1997).

18. MIERS, *supra* note 15.

19. These include the end of the Cold War and the Fall of the Soviet Union, together with the acceleration of trade liberalization and globalization in the late twentieth century. SHELLEY, *supra* note 14; Karen E. Bravo, *Free Labor! Toward a Labor Liberalization Solution for Modern Trafficking in Humans*, 18 *TRANSNAT’L L. & CONTEMP. PROBS.* 545, 545-616 (2009).

20. WILLEM VAN SCHENDEL & ITTY ABRAHAM, *ILLICIT FLOWS AND CRIMINAL THINGS* 69-100 (2005) (citing DIANA WONG, *THE RUMOR OF TRAFFICKING: BORDER CONTROLS, ILLEGAL MIGRATION, AND THE SOVEREIGNTY OF THE NATION-STATE* (2004)).

21. MIERS, *supra* note 15.

22. *Id.*

23. VICTOR MALAREK, *THE NATASHAS: INSIDE THE NEW GLOBAL SEX TRADE* (2003).

Organized Crime.²⁴ The activist efforts of women's groups led to the simultaneous opening for signature in 2000 of the Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the U.N. Convention Against Transnational Organized Crime.²⁵

The U.N. Trafficking Protocol defined "human trafficking" and imposed trans border anti-crime coordination obligations on states parties.²⁶ The instrument further required that states decriminalize trafficked persons who had violated the state's immigration laws, and provide rehabilitation services to such persons.²⁷ States also agreed to refrain from repatriating trafficked persons who would be harmed by such repatriation.²⁸

The U.S. Trafficking Victims Protection Act 2000, and its reauthorizing legislation, have also been highly influential. Pursuant to the extraterritorially directed provisions of the legislation, the United States Department of State (DOS) annually ranks the anti-trafficking efforts of countries throughout the world.²⁹ States have responded by adopting forms of the model legislation demanded by the U.S., and have acceded to the international instruments that the U.S. Trafficking in Persons (TIP) Report list is crucial to anti-human trafficking efforts.³⁰

The U.N. Trafficking Protocol and the U.S. anti-trafficking legislation and their ardent embrace by NGOs and civil society groups led to greater and ever-increasing public and state awareness of human trafficking. As political and civil society awareness increased, influential voices, such as Kevin Bales and E. Benjamin Skinner, spearheaded a change in rhetorical framing: the severe forms of exploitation were not just "human trafficking," but "modern slavery" or new

24. Janie Chuang, *Redirecting the Debate Over Trafficking in Women: Definitions, Paradigms, and Contexts*, 11 HARV. HUM. RTS. J. 65, 65-107 (1998).

25. See, e.g., United Nations Convention Against Transnational Organized Crime, G.A. Res. 55/25, annex I, U.N. GAOR, 55th Sess., Supp. No. 49, Vol. I, at 44, U.N. Doc. A/45/49 (2001); see also Chuang, *supra* note 25.; United Nations Protocol To Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 55/25, annex II, U.N. GAOR, 55th Sess., Supp. No. 49, Vol. I, at 60, U.N. Doc. A/45/49 (2001), entered into force Sept. 9, 2003 (hereinafter, "UN Trafficking Protocol").

26. United Nations Protocol To Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, *supra* note 26.

27. *Id.*

28. U.S. Trafficking Victims Protection Act, 22 U.S.C. § 7101 §§ 6(e)(3)(A) & (B) (2000).

29. *Id.*

30. See, e.g., U.S. Dep't of St., Bureau of Democracy, H.R. & Lab., Trafficking in Persons Report (2017). In addition to the Trafficking Protocol, these instruments are: the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography; the Optional Protocol to the Convention on the Rights of the Child in Armed Conflict; ILO Convention 29, Forced Labour; ILO Protocol of 2014 to the Forced Labour Convention; ILO Convention 105, Abolition of Forced Labour; ILO Convention 182, Elimination of Worst Forms of Child Labor; and ILO Convention 189, Domestic Workers. See U.S. TIP Report 2017 at 438.

kinds of slavery.³¹ Further, this new slavery was even worse than the global enslavement of Africans which had been legally abolished in the nineteenth century.³² The rhetorical transformation has made the terminology of "trafficked person," "human trafficking," and "trafficking in humans" virtually synonymous with "slavery." For example, the 2017 TIP Report, under the heading "What is Trafficking in Persons" provides, with no introductory text, a description of various forms of human trafficking under the subheading "The Face of Modern Slavery."³³ Another example is the website of Polaris, an influential U.S.-based NGO, that, under the heading "The Typology of Modern Slavery," analyzes 32,000 cases of human trafficking.³⁴

I have argued elsewhere that the use of the term "slavery" provides emotional and rhetorical focus for state anti-"slavery" initiatives.³⁵ Pursuant to this methodology we are guided to adjust our perceptions such that the labels "slave," "slavery," and "enslavement" (whether "modern," "contemporary," or just plain "slavery") appropriately capture the contemporary exploitation of millions of persons throughout the globe.³⁶ The emotionally appealing usage is catchy, and has come to dominate understanding of discussions about severe forms of contemporary exploitation.³⁷ Despite cautionary words about the risks and offensiveness of the definitional dilution, the use of "slavery" appears to be triumphant: "human trafficking" is "slavery," and "slavery" is "human trafficking."³⁸

Against a backdrop of state legal abolition and prohibition of chattel, slavery in both the international and domestic spheres, the movement reinforced in public perception and in state policy a law enforcement paradigm pursuant to which the targeted exploitation (1) is outside the norm and violates the human rights of individual persons; (2) breaches international law and domestic law; and (3) will be fought primarily through (i) criminal law, and (ii) services to persons

31. See, e.g., KEVIN BALES, *DISPOSABLE PEOPLE: NEW SLAVERY IN THE GLOBAL ECONOMY* (2d ed. 2004); & E. BENJAMIN SKINNER, *A CRIME SO MONSTROUS: FACE-TO-FACE WITH MODERN SLAVERY* (2008). According to Kamala Kempadoo, "The modern-day or anti-slavery campaign, also referred to here as modern day abolitionism, was substantially formed through the work of the American Kevin Bales in the late 1990s." Kamala Kempadoo, *The Modern-Day White (Wo)Man's Burden: Trends in Anti-Trafficking and Anti-Slavery Campaigns*, 1 J. HUM. TRAFF. 8, 9 (2015).

32. See BALES, *supra* note 32.

33. U.S. Dep't of St., *supra* note 31, at 17.

34. POLARIS, *The Typology of Modern Slavery*, <https://polarisproject.org/typology>.

35. Karen E. Bravo, *Exploring the Analogy between Modern Trafficking in Humans and the Trans-Atlantic Slave Trade*, 25 B.U. INT'L L.J. 207, 207-295 (2007).

36. See Walk Free Foundation, *Global Slavery Index 2016 Report* (2016).

37. Annie Bunting & Joel Quirk, *Contemporary Slavery as More than Rhetorical Strategy? The Politics and Ideology of a new Political Cause*. New Haven, Yale University. Retrieved at https://glc.yale.edu/sites/default/files/pdf/bunting-quirk_contemporary_slavery_intro_rev.pdf; Bravo, *supra* note 36.; Janie Chuang, *Exploitation Creep and the Unmaking Of Human Trafficking Law*, 108 AM. J. INT'L L. 609 (2014).

38. Chuang, *supra* note 38, 609-649.

victimized by the criminal perpetrators.³⁹ Professor Vijayarasa notes that “The annexing of the Trafficking Protocol to a convention focused on organized crime prevention and criminal justice was a deliberate step that continues to shape the mainstream trafficking framework and the idea that trafficking ‘is a form of organized crime.’”⁴⁰

B. The “Whys” of Human Trafficking

However, the rhetoric of aberrational criminal enslavers tends to ignore the upstream aspects of the exploitation. The causes of human trafficking and other severe forms of contemporary exploitation are inherently economic.⁴¹ I identified some of the systemic conceptual and structural tensions and inconsistencies that create the preconditions for human trafficking. These include the rhetorical and implementation contradictions surrounding trade liberalization and globalization, failure to conceptualize and protect humans as both rights bearers and economic actors, and the dominance of state sovereignty interests (control over borders and imposition of human immobility).⁴² Other upstream contributors include the disruption created by civil and international wars; economic inequality; and the subordination of some groups (based on age, gender, racial and ethnic identities, for example) within individual states and societies.

C. State Anti-“Slavery” Efforts

Analysis of the state priorities revealed by treaties, legislation, and initiatives identify a focus on the *how* (but insufficiently on the *why*) of severe forms of contemporary exploitation. Some of the drowning may be pulled from the river and saved. However, the origins and the entry points of the victimized have not yet been adequately mapped or addressed. For example, despite acknowledgement of the connection between irregular migration flows and severe forms of exploitation, state policies do not connect the dots to the surrounding economic, political, and cultural causes of migration flows. Downstream anti-exploitation and anti-slavery efforts would include state cooperation in economic development, general education policies and programs, and the economic, social, and other empowerment of vulnerable groups within source countries.

State anti-“slavery” efforts fall within different categories, including: (1) international instruments and cross-border cooperation through intergovernmental organizations; (2) domestic legislation and policies; (3)

39. RAMONA VUEYARASA, *SEX, SLAVERY AND THE TRAFFICKED WOMAN: MYTHS AND MISCONCEPTIONS ABOUT TRAFFICKING AND ITS VICTIMS* 5 (2015).

40. *Id.*

41. Bravo, *supra* note 20.

42. *Id.*

cooperation with international NGOs; and (4) cooperation with domestic NGOs and civil society.

The principal international instruments are the U.N. Convention on Transnational Organized Crime and the U.N. Trafficking Protocol.⁴³ Together with other regional instruments adopted by states (such as the Council of Europe Convention on Action against Trafficking in Human Beings⁴⁴ and the South Asian Association for Regional Cooperation’s Convention Preventing and Combatting Trafficking in Women and Children for Prostitution⁴⁵), the instruments attempt to modernize and implement the *ius cogens* norm prohibiting slavery.⁴⁶

The intergovernmental agencies whose mandates include anti-human trafficking and anti-slavery are the International Labour Organization, the United Nations High Commission on Refugees (UNHCR), the United Nations Office of Drugs and Crime (UNODC), and the International Organization of Migration (IOM), among others.⁴⁷ The work of these intergovernmental agencies, each of which has a specialized remit (as reflected in their names) touches upon different aspects of human trafficking and other severe forms of exploitation. However, their efforts are affected by low levels of coordination and information sharing among these agencies.⁴⁸ Further, because these agencies do not have power to sanction states or other actors, they cannot compel action from states or other agencies with relevant mandates and great economic and regulatory power (such as the World Trade Organization, the International Monetary Fund, or the World Bank) that undermine the effectiveness of their work. For example, the trade liberalization, currency regulation and international policies effected by the World Trade Organization, the International Monetary Fund, and the World Bank

43. Other international instruments which preceded the late 20th century reawakening are: the 1910 International Convention for the Suppression of the White Slave Traffic; the 1926 International Convention on the Suppression of the Traffic in Women and Children; the 1933 International Convention for the Suppression of the Traffic in Women of Full Age; and the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

44. Council of Europe, Convention on Action against Trafficking in Human Beings, May 16, 2005.

45. Convention Preventing and Combatting Trafficking in Women and Children for Prostitution, South Asian Ass’n for Reg’l Cooperation (1985-2016), http://saarc-sec.org/download/publications/compilation_of_Charter_conv_20161227112809.pdf.

46. Under international law, a *ius cogens* norm is a mandatory customary norm from which no state may lawfully derogate. For example, no state may legally create or implement “slavery” in its domestic laws or in its international relations. However, the prohibition does not target state laws and policies that create *de facto*, versus *de jure* conditions akin to slavery.

47. See, e.g., Int’l Org. Migration, Glob. Trafficking Trends in Focus: IOM Victim of Trafficking Data 2006-2016 (2017), https://www.iom.int/sites/default/files/our_work/DMM/MAD/A4-Trafficking-External-Brief.pdf; UN Off. Drugs & Crime, Glob. Rep. Traff. in Persons (2016), https://www.unodc.org/documents/data-and-analysis/glotip/2016_Global_Report_on_Trafficking_in_Persons.pdf; Vijayarasa, *supra* note 40, at 28. For a more expansive list of such organizations, see the US TIP Report 2017, 440-441.

48. Vijayarasa, *supra* note 40, at 29.

may result in economic, political, and social dislocations that increase vulnerability and irregular migration flows.

States may also support (through grant funding mechanisms), and/or rhetorically coordinate efforts with, prominent international and domestic NGOs such as Polaris, a domestic U.S. NGO; Walk Free Foundation, an Australian NGO;⁴⁹ International Justice Mission (IJM), a U.S. NGO;⁵⁰ and Anti-Slavery International,⁵¹ a U.K.-based NGO.

Domestically, states such as the U.S. and the U.K. have adopted legislation that identify and criminalize severe forms of exploitation as either, or both, human trafficking or modern slavery and put corporate actors on notice that they must monitor their supply chains (including requiring the submission of reports regarding those efforts).⁵² Such legislation also provide for civil remedies such as the “clawing back” from trafficker- perpetrators of the proceeds of criminal enterprises using concepts of unjust enrichment; and have eliminated provisions that required the indictment and punishment of persons trafficked for sex, including minors engaged in the trade. Together with the U.K. Modern Slavery Act, the U.S. William Wilberforce Act, U.S. PROTECT Act, and Survivors of Human Trafficking Empowerment Act are examples of such legislation. Other states have adopted domestic anti-human trafficking legislation.⁵³

The U.S., on the federal level, is committed to a philosophy of the Four “Ps”: prevention (through education), prosecution (of perpetrators), protection (of trafficked/ enslaved persons), and partnership (with civil society).⁵⁴ The component states of the U.S. follow similar policies, and have been the source of innovations directed at inflection points such as hotels, corporate supply chains, and decriminalization and rehabilitation of prostituted minors.⁵⁵ Domestic U.S. efforts have also included the funding of federal anti-trafficking task forces; as well as competitive awards for the creation of task forces by individual states.⁵⁶

49. <https://www.walkfreefoundation.org/>

50. <https://www.ijm.org/>

51. <https://www.antislavery.org/>

52. Erika R. George & Scarlett R. Smith, *In Good Company: How Corporate Social Responsibility Can Protect Rights And Aid Efforts To End Child Sex Trafficking And Modern Slavery*, 46 N.Y.U. J. INT'L L. & POL. 55, 55-113 (2013). See also U.K. Modern Slavery Act (2015), <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>.

53. U.S. Dep't of St., *supra* note 31, at 17.

54. U.S. Dep't of St., *supra* note 31, at 1.

55. Melynda M. Barnhart, *Sex and Slavery: An Analysis of Three Models of State Human Trafficking Legislation*, 16 WM. & MARY J. WOMEN & L. 83, 83-132 (2009); Abigail Kuzma, *Human Trafficking* (year not provided), [https://www.in.gov/attorneygeneral/files/Kuzma_Civil_and_Criminal_Justice_Summit-HT\(2\).pdf](https://www.in.gov/attorneygeneral/files/Kuzma_Civil_and_Criminal_Justice_Summit-HT(2).pdf); Cheryl Nelson Butler, *Kids for Sale: Does America Recognize its Own Sexually Exploited Minors as Victims of Human Trafficking?*, 44 SETON HALL L. REV. 833, 833-871 (2014).

56. U.S. Dep't of Just. Off. of Just. Programs. Bureau of Justice Assistance. (2016). *Anti-Human Trafficking Task Force Initiative*. Retrieved from the Bureau of Justice Assistance website: https://www.bja.gov/ProgramDetails.aspx?Program_ID=51; Office of the Indiana Attorney

The U.K.’s Modern Slavery Act of 2015⁵⁷ embraced the rhetoric of slavery and abolitionism. The legislation consolidates and updates offences related to slavery, enhances carceral punishment, and empowers the judiciary to provide for forfeiture of properties as well as reparations to trafficked person. The Modern Slavery Act also expands law enforcement powers with respect to anti-slavery and anti-human trafficking, including expansion of maritime interdiction efforts. The mandate for transparency in corporate supply chains, which requires reporting by corporate actors, and the new protections (including non-criminalization) and creation/recognition of independent child advocates rounds out the scope of the new legislation.

Analysis of the variety of types of anti-“slavery” or anti-trafficking initiatives reveals a focus on criminalization and punishment; identification of, and the provision of services to, those victimized; and the imposition of reporting requirements to a selection of actors, with the goal of achieving transparency and, it is hoped, prevention. Other prevention efforts include the provision of educational materials to civil society, professionals (doctors, teachers, social workers, for example), and to groups who are potentially vulnerable to severe forms of exploitation.⁵⁸ In the meantime, the provision of social services and, sometimes, even the legalization of undocumented immigrant status will help restore a selection of victims to their former or better lives. For example, the U.S. Trafficking Victims Protection Act created a specific visa category for which trafficking victims may apply.⁵⁹

However, despite rhetoric that emphasizes a victim-centered approach,⁶⁰ the criminalization model is *not* victim-centered so as to empower and protect the potentially vulnerable. The model requires that the enslaved/trafficked person *not* be criminalized. In other words, it creates a negative, as opposed to a positive, obligation to protect. Prevention is limited to educational awareness campaigns that rely on a stereotype of ignorant victims⁶¹ and does not require the adoption of the kinds of holistic initiatives I propose in Part V, which focus on structural vulnerability to exploitation. State anti-slavery efforts are performative – suggesting anti-slavery zeal but being, in reality, attention-getting and superficial – with limited possibilities (or intentions) of engagement with fundamental exploitative structures.

General. (2016). *The 2016 State Report on Human Trafficking*, <https://www.in.gov/attorneygeneral/files/ht%20report%202016.pdf>.

57. U.K. Modern Slavery Act 2015. Accessed at: <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>.

58. Vijayarasa, *supra* note 40, at 11.

59. U.S. Trafficking Victims Protection Act, 22 U.S.C. § 7101 §§ 6(e)(3)(A) & (B) (2000).

60. For example, the 2017 U.S. TIP Report speaks of “the victim centered approach, first and foremost.” (2017 TIP, Letter of the Ambassador-at-Large). U.S. Dep’t of St., *supra* note 31.

61. Vijayarasa, *supra* note 40, at 98-100.

III. DISHONESTY: TYPES, SUBJECTS, METHODOLOGIES, AND AUDIENCES

What is ‘dishonesty’ in the context of this Article’s analysis? I use the term to convey failure to tell “truth” (not “the truth”) through the use of disingenuousness and misrepresentation, willful blindness, and hypocrisy. “Truth,” in this context, would go upstream to identify and address the complex structures and web of factors that lead to severe forms of exploitation. While the cruel, desperate, and criminal take advantage of those made vulnerable by these factors, virtually all of the global “us” benefit from, and are a part of, these systems.⁶²

A. Types of Dishonesty

Despite the ardency displayed by governmental actors and the apparent commitment and goodwill of many state officials, such as legislators, prosecutors, law enforcement, and other members of the civil service, the conceptual frameworks used to understand the exploitation, and the methodologies deployed by states, reek of hypocrisy and dishonesty. In the state’s anti-trafficking performance, rhetorical expressions of concern and horror and adoption of the criminalization model are coupled with the indifference exposed through the adoption of cynically contradictory legislative and policy initiatives. The contradictions reveal that the anti-“slavery” efforts are not intended to challenge and meaningfully combat the underlying economic, political, and other roots of the targeted exploitation.

Examples of such contradictions are not difficult to identify: The European Union (E.U.)’s initiative to fight the smuggling and trafficking of migrants across the Mediterranean through the use of military force⁶³ demonstrates the prioritization of law enforcement and border security over human vulnerability. Australia’s detention of unauthorized asylum seekers in abusive offshore detention facilities also demonstrate its overriding commitment to border protection and prevention, barely masked by the rhetorical goal of protecting the vulnerable asylum seekers from exploitation by criminal non-state actors.⁶⁴ Another example is the U.S.’s detention and deportation of undocumented child migrants fleeing violence and exploitation in their home countries, together with agreements with Mexican authorities that Mexico will intercept and return such

62. In our capacities as consumers, for example. Bravo, *supra* note 10, at 25-43 (exploring the roles of the average person in severe forms of exploitation).

63. James Kanter, *E.U. Agrees to Naval Intervention on Migrant Smugglers*, N.Y. TIMES (May 28, 2015), https://www.nytimes.com/2015/05/19/world/europe/european-union-human-trafficking-military.html?_r=0.

64. Human Rights Watch, *Australia/PNG: Refugees Face Unchecked Violence*. © 2017 by Human Rights Watch, <https://www.hrw.org/news/2017/10/25/australia/png-refugees-face-unchecked-violence>.

migrants to the exploitative conditions from which they seek asylum.⁶⁵ The latter is ironic, in light of the ever more expansive and synonymous use of “human trafficking” and “slavery” terminology to describe child soldiers and sexual exploitation of children. The forced returns and withholding of protection also contradict U.S. anti-“slavery” and anti-human trafficking rhetoric. For example, a mere few days after U.S. security forces deployed tear gas on Central American migrants, including women and children, who were seeking asylum at the militarized U.S.-Mexican border,⁶⁶ Ivanka Trump triumphantly touted the Trump administration’s anti-human trafficking efforts.⁶⁷ Ms. Trump’s curiously timed op-ed⁶⁸ was accompanied by a “sexy” image of scantily dressed Asian women photographed during a police raid of a Thai karaoke bar, implying that human trafficking occurs “over there,” not over *here*, and certainly is not connected to contradictory U.S. governmental policy and/or actions.

65. International Crisis Group, *Easy Prey: Criminal Violence and Central American Migration*, LATIN AM. REP. N 57, July 2016; Mica Rosenberg & Yeganeh Torbati, *U.S. will phase out program for Central American child refugees*, REUTERS, Sept. 26, 2017, <https://www.reuters.com/article/us-usa-immigration-minors/u-s-will-phase-out-program-for-central-american-child-refugees-idUSKCN1C234G>; Rodrigo Dominguez-Villegas & Victoria Rietig, *Migrants Deported from the United States and Mexico to the Northern Triangle: A Statistical and Socioeconomic Profile*, MIGRATION POL’Y INST. (Sept. 2015), <https://www.migrationpolicy.org/research/migrants-deported-united-states-and-mexico-northern-triangle-statistical-and-socioeconomic>; Valerie Strauss, *The American tradition of caging children*, WASH. POST, Oct. 10, 2018, https://www.washingtonpost.com/education/2018/10/10/american-tradition-caging-children/?utm_term=.5e402ea74559; Amy Wang, *The U.S. lost track of 1,475 immigrant children last year. Here’s why people are outraged now*, WASH. POST, May 29, 2018, https://www.washingtonpost.com/news/post-nation/wp/2018/05/27/the-u-s-lost-track-of-1500-immigrant-children-last-year-heres-why-people-are-outraged-now/?utm_term=.cb6c66b3bb16; Arelis Hernandez, *Trump Administration is Holding Record Number of Migrant Youths*, WASH. POST, Dec. 21, 2018, https://www.washingtonpost.com/local/immigration/trump-administration-is-holding-record-number-of-migrant-youths/2018/12/21/183470c0-03b7-11e9-b5df-5d3874f1ac36_story.html?utm_term=.b33baec9aed3. The exploitation includes coerced membership in gangs and the commission of criminal activity, as well as sexual exploitation.

66. Christopher Sherman, *US agents fire tear gas as some migrants try to breach fence*, ASSOC. PRESS, Nov. 25, 2018, <https://www.apnews.com/72efa4f1822241c2817a2fb6aa191fb4>.

67. Ivanka Trump, *The Trump administration is taking bold action to combat the evil of human trafficking*, WASH. POST, Nov. 3, 2018, https://www.washingtonpost.com/opinions/the-trump-administration-is-taking-bold-action-to-combat-the-evil-of-human-trafficking/2018/11/29/3e21685c-f411-11e8-80d0-f7e1948d55f4_story.html?utm_term=.99bfe048ccb1.

68. The op-ed was curiously timed because it was published a mere few days after the tear gassing of asylum seekers and ongoing anti-asylum border action. The op-ed also came less than two weeks after the revelation that Ms. Trump had used personal emails to conduct government business. Carol D. Leonnig & Josh Dawsey, *Ivanka Trump used a personal email account to send hundreds of emails about government business last year*, WASH. POST, Nov. 19, 2018, https://www.washingtonpost.com/politics/ivanka-trump-used-a-personal-email-account-to-send-hundreds-of-emails-about-government-business-last-year/2018/11/19/6515d1e0-e7a1-11e8-a939-9469f1166f9d_story.html?utm_term=.95473bff013d. A generous interpretation is that Ms. Trump and the administration cannot see the connection between human trafficking, migration flows, and U.S. anti-immigrant policies. A more critical interpretation would be that the anti-human trafficking actions and op-ed are a useful distraction from the effects of those policies.

The principal types of dishonesty used in state anti-“slavery” efforts are interrelated, disingenuousness, and misrepresentation. The state is disingenuous and/or misrepresents truth when it rhetorically and effectively moves the focus away from state roles (such as legislation and implementation of policies) that are implicated in or create exploitation.⁶⁹ The state is willfully blind when it refuses to acknowledge its own underlying assumptions and priorities. These underlying assumptions are a laser focus on state primacy, as opposed to the primacy of the protection of the human individual and the individual’s human rights. It is true that state concerns about the state’s security and the security and safety of those under its protection are essential to the role of the state. However, contemporary policy implementation does not give equal attention to the protection of human rights, including human rights of the most vulnerable.

This focus may also stem, in part, from path dependence. The structures and institutions of the state resist easy modification, and the types of tools traditionally used by states – criminalization and law enforcement, for example – are easier for state institutions and actors to adopt and (attempt to) adapt. An individual state itself may be reluctant or unable to try new, more innovative, and holistic tools, particularly if those have not been adopted by more powerful states. Other causes of path dependence may include capture of the state by some of the powerful interests that benefit from the exploitation, and the possibility that an individual state just does not have either the will or resources to effectively prevent the targeted exploitation.⁷⁰ This possibility emerges, in part, from the nation state’s origins as an entity that drew its powers from historic forms of exploitation such as colonization, nationalism, and slavery. Some states may be dependent on the continuation of contemporary forms of exploitation. Examples include labor-exporting states that rely on the remittances sent home by their nationals and are unable to respond adequately to their exploitation. The Philippines, for example, is dependent on the remittances of its expats, but has limited options with which to offer them protection from severe, even fatal, exploitation. Although the Philippines has banned the deployment of Filipinos to Kuwait, activists are concerned that, due to economic hardship, Filipinos will use more dangerous informal mechanisms to migrate for work.⁷¹ Further, the structures and doctrines of international law, which cherishes positivism, state sovereignty, and non-interference in domestic affairs, limit the types of initiatives that states may adopt. Respect for an individual state’s sovereignty and reluctance to openly interfere in domestic matters results in failure to protect the human rights of the residents of abusive or failed states. The civil war in Syria is

69. Bravo, *supra* note 10.

70. *Id.*

71. Natasha Turak, *Philippines’ Duterte declares permanent ban on workers going to Kuwait after abuse and murder cases*, CNBC, Apr. 30, 2018, <https://www.cnbc.com/2018/04/30/philippines-duterte-declares-permanent-ban-on-workers-going-to-kuwait.html>.

an emblematic example of such consequences. So do the difficulties of collaborating internationally, particularly where the collaboration centers on human protection, instead of the usually dominant state interests.⁷²

My critique of hypocrisy as a feature of the dishonesty of state anti-"slavery" efforts stems from the dissimulation practiced by states. The inherently contradictory policies and legislation discussed elsewhere in the Article indicate that both the rhetorical stance and the efforts by states are hypocritical and limited to the *performance* (or appearance) of anti-slavery zeal, not the implementation of effective anti-exploitation methodologies.

B. Subjects of Dishonesty

States are dishonest about a variety of aspects of contemporary "slavery" and their own anti-"slavery" efforts.

1. Nature of the exploitation

In using the term "slavery," the states signal that contemporary anti-exploitation efforts are modeled on nineteenth century slavery abolition. Invoking "slavery" and "anti-slavery," evokes the international legal regime's formal abolition of slavery, and self-congratulatory accolades regarding some Western states' perceptions of their selfless and heroic nineteenth century roles. However, although legal abolition of slavery was an essential step toward the implementation of concepts of human freedom, on its own it was insufficient to eliminate contemporaneous and contemporary forms of severe exploitation by both state and non-state actors. Historic examples of these include post-abolition exploitation in British India, the European colonization of Africa,⁷³ and forced labor extracted by the colonizers; and the U.S.'s post-Reconstruction South, among others.⁷⁴ Contemporary examples include: the continued subordination of minority groups and the control of land in formerly colonized states and territories (South Africa and Australia, for example) and metropolitan states (the mass incarceration of Blacks in the U.S., for example); the global racial hierarchy, with whiteness at its apex; the "natural" subordination of formerly colonized states with majority non-white populations within the international political

72. A cursory review of U.N. Security Council resolutions since the inception of the U.N. indicates that human rights is not the subject area of most pressing interest to the powerful states.

73. The eradication of slavery on the African Continent was one of the rationales used to support the division and colonization by European powers.

74. Suzanne Miers, *SLAVERY IN THE TWENTIETH CENTURY: THE EVOLUTION OF A GLOBAL PROBLEM* (Lanham, Maryland: AltaMira Press, 2003); Douglas A. Blackmon, *SLAVERY BY ANOTHER NAME: THE RE-ENSLAVEMENT OF BLACK AMERICANS FROM THE CIVIL WAR TO WORLD WAR II* (New York City: Anchor Books, 2009); Lowell J. Satre, *CHOCOLATE ON TRIAL: SLAVERY, POLITICS & THE ETHICS OF BUSINESS* (Columbus, Ohio: Ohio University Press, 2005).

regime; and the dispossession of rural populations by collusion of government officials, corrupt elites, and multinational agribusinesses, for example.⁷⁵

2. Contradiction between the state's rhetoric and the exploitation targeted by the state

The state hides, ignores, refuses, or is unable to acknowledge inherent conflict between state anti-"slavery" policies and other policies and strategies pursued by the state. In addition to the consequences of the conflict among the state-supported trade liberalization versus the human immobilization efforts discussed earlier, the conflict is manifested in the contradictions between the policies of different arms of the state. These include the externally-focused emphasis on punitive anti-immigrant and anti-refugee policies versus states' protection and prevention rhetoric, as well as conflicts in domestic policies, such as: excessive law enforcement and prosecution versus the provision of victim service agencies and policies.⁷⁶ The contradiction is further revealed by analysis of state funding directed toward law enforcement and border militarization versus anti-human trafficking spending.⁷⁷ Rather than committed anti-"slavery" actors, state efforts reveal prioritization of the preservation and reinforcement of existing relationships of power and subordination among and between racial, national, and socioeconomic groups, among powerful and less powerful states, as well as the subordination of humans to legal entities such as corporations, or the state itself.

3. State- versus victim-centered interests of the state and its efforts

The state is dishonest when it ignores or fails to acknowledge its prioritization of state interests. The anti-"slavery" rhetoric and performance create a perception of state moral authority in, and commitment to, the fight against severe forms of contemporary exploitation. However, the contradictions

75. Abu Ahsan & Katy Gardner, *Dispossession by 'Development': Corporations, Elites and NGOs in Bangladesh*, S. ASIA MULTIDISCIPLINARY ACAD. J. (2016), <https://journals.openedition.org/samaj/4136>; Fred Magdoff, *Twenty-First-Century Land Grabs: Accumulation by Agricultural Dispossession*, 65 MONTHLY REV. 1, 1-18 (2013).

76. Sonia Nazario, Opinion, *Trump's Cruel Choice: Who Gets to Stay?*, N.Y. TIMES, Oct. 29, 2017, <https://www.nytimes.com/2017/10/27/opinion/sunday/dreamers-children-immigration-congress.html>; Jennifer Chacón, *Human Trafficking, Immigration Regulation and Sub-federal Criminalization*, 20 NEW CRIM. L.REV. 96, 96-129 (2017); Jennifer Chacón, *Misery and Myopia: Understanding the Failures of U.S. Efforts to Stop Human Trafficking*, 74 FORDHAM L. REV., 2977, 2977-3040 (2006).

77. For example, contrast the U.S. allocating \$2 billion annually to the U.S. Drug and Enforcement Administration to the \$4 million allocated to the Office to Monitor and Combat Trafficking in Persons. DRUG ENFORCEMENT ADMIN., FY 2017 BUDGET REQUEST AT A GLANCE 2017, <https://www.justice.gov/jmd/file/822096/download>; DEP'T OF ST., OFF. TO MONITOR & COMBAT TRAFF. IN PERSONS, <http://www.allgov.com/departments/department-of-state/office-to-monitor-and-combat-trafficking-in-persons?agencyid=7175>.

discussed earlier reveal that the feigned moral authority disguises state indifference to, or participation in, the creation of exploitative conditions. The state’s interests predominate, *not* the interests of either “enslaved” or trafficked persons or of the persons vulnerable to severe forms of exploitation.

The Libyan situation described in the Prelude is not singular as an example of state indifference to, or complicity in, the severe forms of exploitation that are targeted by state anti-“slavery” initiatives. Rhetoric and condemnations issued by states in regards to that exploitation omits exploration of the ongoing destabilizing consequences of the North Atlantic Treaty Organisation (NATO) and E.U. military intervention in Libya during the throes of the Arab Spring as a major contributing precondition to the exploitation.⁷⁸ Other examples are the apparently intentionally cruel anti-refugee policies that target civilians fleeing exploitation and violation in the Syrian conflict zones.⁷⁹ At the same time, however, dire reports are issued by, for example, NGOs and the U.S. (which has adopted specific anti-Syrian refugee policies), describing and condemning the exploitation of Syrian refugees in the countries where they have sought refuge.⁸⁰

C. Methodologies

The foregoing methodologies that states use are rife with dishonesty and hypocrisy, and can be characterized as “Look what we are doing” and “Don’t look at what we are *not* doing or *could be* doing.” The creation of an anti-“slavery” industrial complex is riveting and emotionally satisfying. However, the reward for the state and the greatest impact is *performative* theater – the appearance of commitment and passion in the fight against human exploitation even while upholding systems and ideologies that support continued subjugation and exploitation.⁸¹

78. SUSANNAH O’SULLIVAN, *MILITARY INTERVENTION IN THE MIDDLE EAST AND NORTH AFRICA: THE CASE OF NATO* (London: Routledge 2017).

79. Griff Witte, *Conditions are horrific at Greece’s ‘island prisons’ for refugees. Is that the point?*, WASH. POST, (Jan. 15, 2018), https://www.washingtonpost.com/world/europe/conditions-are-horrific-at-greeces-island-prisons-for-refugees-is-that-the-point/2018/01/15/b93765ac-f546-11e7-9af7-a50bc3300042_story.html?utm_term=.c8d218f396c6. Writing for The Washington Post, Griff Witte points out that the cruelty appears to be intentional, aimed at deterring Syrian civilians from seeking safety outside the borders of their countries of origin.

80. U.S. Dep’t of St., *supra* note 31, at 4, 248-250, 402. *Struggling to survive: Slavery and exploitation of Syrian refugees in Lebanon*, FREEDOM FUND, (2015), <http://freedomfund.org/wp-content/uploads/Lebanon-report-FINAL-5April2016.pdf>. *EU-Turkey Agreement Failing Women and Girls*, WOMEN’S REFUGEE COMMISSION, (Aug., 2016), <https://www.womensrefugeecommission.org/images/zdocs/EU-Turkey-Refugee-Agreement-Failing.pdf>.

81. This includes acceptance as “normal” of the subjugation and exploitation of formerly colonized and enslaved territories and peoples. Such perspectives are betrayed, for example, by the incumbent U.S. President’s use of the term “shithole/shithouse countries” to characterize formerly colonized non-white countries. See, e.g., Josh Dawsey, *Trump derides protection for immigrants from ‘shithole’ countries*, WASH. POST, Jan. 12, 2018.

I categorize extreme examples as anti-“slavery” performance porn. (I use “porn” in the sense of the evocation of an intense reaction that may be gratifying to both the audience and the performer, but does little to stimulate real change.)⁸² In these cases, graphic images and glossy publications are disseminated, bearing jaw-dropping statistics and deeply affecting narratives of human exploitation and degradation.⁸³ However, are those stories and images “real?” The authors of the TIP Report admit that: “In most cases, the photographs that accompany the stories are not images of confirmed trafficking victims.”⁸⁴ That is, images of ordinary people going about their lives have been used and made available worldwide to further particular state-supported narratives and images of “slavery” and exploitation. Further, “the victim stories included in the Report are meant to be illustrative Many are based on real experiences.”⁸⁵ In other words, it is impossible for the reader to know whether any individual human trafficking narrative or accompanying photographic image in the report is factually true. Although the explanation is highlighted in a text box on page three of the 2018 TIP Report, it is likely that most casual readers of the Report will not see the limiting language.

The publications are often accompanied by celebrity spokespersons or other high-profile figures, who telegenically express horror at the exploitation and declare a commitment to end the exploitation. The 2017 appearances and the 2018 op-ed of Ivanka Trump, the daughter of the incumbent U.S. president described *supra* is an example of such performances. Similarly, despite the anti-“slavery” performances of the U.S. and the U.K., the two states’ anti-immigrant and anti-refugee policies continue to reinforce the exploitability and enslavement of the very groups who those states claim to protect.

These performances powerfully influence public understanding of today’s slaveries in ways that impede the development of more critical analysis and more effective methodologies to combat them. Enthralled by the spectacle of attention-getting efforts to rescue the drowning, the actors neglect to go upstream.

D. Audiences

The audiences of state dishonesty in anti-slavery efforts are internal and external to the state; and are both domestic and international.

82. Other similar widespread uses of “porn” include “poverty porn” and “violence porn,” for example.

83. See, e.g., Walk Free Found., *Global Slavery Index 2016 Report* (2016); U.S. Dep’t of St., Bureau of Democracy, H.R. & Lab., *Trafficking in Persons Report* (2018).

84. U.S. Dep’t of St., *supra* note 84.

85. *Id.*

1. Domestic

The domestic internal audiences are the actors who conceive of, and carry out, state legislation and policy. Those actors understand and act regarding today's slaveries in accordance with the dominant paradigms of aberrational criminality and the power of the law enforcement model created by the state's own dishonesty to itself. Deceived by, and using those dominant paradigms, these state actors create and implement initiatives that address the “hows” of exploitation. The linkages to the fundamental “whys” of the exploitation remain underappreciated, and therefore are not addressed. This, despite excellent analytical contributions of academics and of NGOs such as openDemocracy, that have gone upstream and identified the linkages among economic inequality, irregular migration flows and border militarization, armed conflict zones, and the subordinated status of women and children, among other factors.⁸⁶

Examples of the results of the failure to grapple with the “whys” include the “rescue” of child trafficked victims and their protective incarceration, followed by exasperation that the victims often escape to be reunited with their exploiters.⁸⁷ The linkage of the children's exploitation to the inadequate investments in state social welfare systems, such as meaningful educational opportunities, economic support of the socioeconomically challenged, and the creation of entrepreneurship and job opportunities among under-resourced communities is not addressed, other than in superficial “prevention” efforts centered on “educating” the vulnerable about their exploitability. These efforts fail because they do not provide meaningful escape hatches from the conditions that give rise to exploitability.

2. International

States' international audiences are other states, intergovernmental organizations, multinational corporations (MNCs), and international NGOs. The state focuses those audiences' attention on the criminal actors who directly perpetrate the exploitation. In order for the state to maintain its moral authority, those audiences must be convinced of the accuracy of the states' diagnosis of the causes of today's slaveries, and of the states' commitment to anti-slavery eradication efforts. At the same time, however, the state's dishonest rhetoric and the potent ineffectiveness of the anti-“slavery” efforts reassure fellow states and powerful non-state actors (such as influential MNCs) that the power subordination dynamics upon which they and the states depend will not be systematically challenged. An MNC whose profit margins are increased by low

86. Genevieve LeBaron, Neil Howard, Cameron Thibos & Penelope Kyritsis, *Confronting Root Causes: Forced Labour in Global Supply Chains*, OPENDEMOCRACY & SHEFFIELD POL. ECON. RES. INST. (SPERI), (2018), <https://drive.google.com/file/d/1KK7Rcfbw4SK4nh5RQmcZ-7fZho296bg6/view>.

87. Jennifer Musto, *Control and Protect: Collaboration, Carceral Protection, and Domestic Sex Trafficking in the United States*, OAKLAND: U. CAL. PRESS (2016).

labor costs and exploitative labor conditions is not overly worried about the inconvenience of reporting about its best efforts to cleanse its supply chains. The requirement neither targets fundamental contributions to exploitability such as unfair or unimplemented labor, property, or environmental laws, nor imposes meaningful positive obligations to prevent either exploitation or exploitability.

IV. INEFFECTIVENESS AND EFFECTS

The dishonesty at the heart of state anti-“slavery” efforts means that those efforts are ineffective. My conclusion is based on my understanding that the invoked goals of state anti-slavery efforts – prevention and eradication of contemporary “slavery” (severe forms of human exploitation) – provide the source of the standards against which the effectiveness of state efforts should be assessed.

A. *Ineffectiveness*

I use the following criteria to assess “effectiveness”: (1) decreases in *vulnerability* to exploitation; and (2) decreases in cases of “slavery” or severe forms of exploitation. If the goal is prevention and eradication, then the numbers of victimized or enslaved persons should have decreased as a consequence of anti-slavery efforts. For this analysis, although acknowledging that state and NGO reports indicate that the number of reported prosecutions or even convictions have increased, I decline to focus on these indicators. These numbers do not indicate, and are distinct, from decreases in either vulnerability to exploitation or cases of severe forms of exploitation. The prosecutions and convictions identify wrongdoers who have committed crimes of exploitation that fall within the operative legal definitions. These wrongdoers are usually situated, and commit the atrocities, at the tail end of the chain of exploitation and exploitability. That is, they prey upon a stream of vulnerable persons who are readied by other, structural conditions (socio-economic inequality, subordinated social or political status, political upheavals, flights from zones of armed conflict, and militarized borders, for example) that create and maintain their vulnerability. As these preconditions are left unaddressed, the stream of vulnerable persons continues unabated, even after the identification, prosecution, and even conviction of the end-stage wrongdoers.

Available evidence indicates that state efforts have achieved no decrease in the number of cases of exploitation or enslavement.⁸⁸ According to the U.S. 2018

88. I share the concerns and perceptions of anti-trafficking activists and academics regarding the methodologies, incompleteness and consequent inaccuracy of trafficking statistics. Like them, however, due to the limited availability of relevant reliable statistics, I resort to the information that is made available by states, international organizations, and NGOs. In the case of the TIP material generated by the U.S. Department of State, that the prosecution and conviction numbers are so

TIP Report, in 2017, states prosecuted 17,880 human traffickers worldwide and convicted 7,045. (The prosecution and conviction figures for 2016 are reported as 14,939 and 9,072 respectively, showing an increase in prosecutions accompanied by a decrease in convictions.) Similarly, 100,453 persons were identified as victims in 2017 as compared to 68,453 identified in 2016 (marking a forty-seven percent increase in victim identification).⁸⁹ The TIP Report’s table and accompanying text do not indicate whether the victims identified were released from their exploiters and/or rehabilitated. This lack of transparency regarding the fate of these detected trafficked persons creates concerns about the functioning of the “victim-centered” approach.

Further, there is no evidence of a *potential* decrease in severe forms of exploitation or “slavery.” Instead, greater numbers of individual humans have been identified as being vulnerable to exploitation or enslavement, and the reports of NGOs and intergovernmental organizations with whom states collaborate claim that there is a significant expansion in the number of persons identified as enslaved, exploited or trafficked.⁹⁰ Indeed, between 2013 and 2016, Walk Free Foundation’s Global Slavery Index identified a significant increase in global slavery. The organization identified 29.8 million enslaved persons in 2013 and 45.8 million in 2016.⁹¹ A 2017 report produced by Walk Free Foundation in collaboration with the International Organization of Migration and the International Labour Organization announced that more than 40 million persons are enslaved around the globe, with more than 152 million children victimized by child labor.⁹² The methodologies utilized by Walk Free Foundation have been challenged by experts in the field.⁹³ As such, the increase may reflect merely an expanded (and potentially flawed) definition of slavery and enslavement, instead of an actual increase in the numbers of severely exploited humans. Nevertheless, to the extent that these numbers are accepted by policy makers, other intergovernmental organizations and NGOs, the public, and the media, they contribute to the constructed “reality” of contemporary slavery.

dismally low (in contrast to the expansive claims regarding the extant scope of human trafficking and slavery), strongly suggests the ineffectiveness of the anti-slavery efforts.

89. U.S. Dep’t of St., *supra* note 84, at 43. For context, the 2015 figures for prosecutions and the 2018 figures for victim identification are the highest reported in the eight-year period covered by the chart.

90. Walk Free Found., *supra* note 84.; Int’l Org. of Migration, *Global Trafficking Trends in Focus: IOM Victim of Trafficking Data 2006-2016* (2016), https://www.iom.int/sites/default/files/our_work/DMM/MAD/A4-Trafficking-External-Brief.pdf; U.S. Dep’t of St., *supra* note 31.

91. Walk Free Found., *Global Slavery Index 2013 Report* (2013); Walk Free Found., *Global Slavery Index 2016 Report* (2016).

92. Int’l Org. of Migration, *supra* note 91.

93. Janie Chuang, *Exploitation Creep and the Unmaking Of Human Trafficking Law*, 108 AM. J. INT’L L. 609-649 (2014); Andrew Guth, Robin Anderson, Kasey Kinnard & Han Tran, *Proper Methodology and Methods of Collecting and Analyzing Data: An Analysis of the Global Slavery Index*, 2(4) SOCIAL INCLUSION 14-22 (2014).

B. Effects

The dishonesty and ineffectiveness of state anti-“slavery” efforts result in the institutionalization of unwittingly or deliberately ineffective efforts and the growth of an anti-human trafficking industrial complex.⁹⁴ The perverse consequence of the failure to go upstream is to leave unchallenged – and even reinforce – the structural bases of vulnerability to the severe forms of exploitation characterized as contemporary “slavery.”

The rhetoric of “slavery” reinforces idealized perceptions about existing state-supported and state-implemented legal, political, and economic structures – that they prioritize the human person and support values of fairness and neutrality. States are able to play both sides: rhetorical champions of human rights and of victims, *and* supporters of exploitative systems through passive or active support, or through failure to take positive action against these contributing factors.

The anti-“slavery” efforts are designed as visually and emotionally appealing performance, while being minimally disruptive to existing systems of exploitation. The horrifying rhetoric and imagery attempt to detach human trafficking and the targeted forms of exploitation from other endemic forms of exploitation that are essential to global systems of power and subordination, and from the would-be trans border movement and attempted intra-state immobilization of peoples.⁹⁵ As mentioned earlier, the inherent conflict between trade liberalization (and its consequent subjection of weak domestic markets to global competition) and rigid anti-immigrant policies and laws create great vulnerability. The human person who seeks opportunity to live and work outside her national borders as a result of domestic economic stresses is criminalized and coerced by the state into the ambit of often exploitative people movers.⁹⁶

A significant proportion of state anti-“slavery” efforts are a bread-and-circuses performative endeavor. The dishonest methodologies allow states to appear to be champions of human rights and victims of exploitation, even while they deploy and support contradictory policies that facilitate exploitation. Despite rhetorical invocations of commitment to prevention and eradication of severe forms of contemporary exploitation, states avoid commitment to meaningful change in existing power-subordination relationships. The superficial “protective” mechanisms, the funding of NGOs for optics, and the benefit of some

94. “Anti-human trafficking industrial complex” riffs on the term “military industrial complex” against whose growth U.S. President Eisenhower futilely warned the United States. The term denotes a system with inherent incentives and internal logic toward self-perpetuation and growth, often to the detriment of its own stated mission, and despite the lack of evidence of effectiveness. The term is used in other contexts, such as the futile and ever-expanding anti-drug trafficking industrial complex. The anti-slavery industrial complex is likely to achieve as much (or as little) as the War on Drugs’ anti-drug trafficking industrial complex.

95. JULIA O’CONNELL DAVIDSON, *THE RIGHT TO LOCOMOTION? TRAFFICKING, SLAVERY AND THE STATE* 157-178 (Prabha Kotiswaran eds., 2017).

96. Bravo, *supra* note 20 at 545-616.

“deserving” (i.e., perfect victims), allow states to ignore other, more inconvenient victims.

V. CONCLUSION: TOWARD A HOLISTIC APPROACH

If the dishonesty at the heart of state anti-“slavery” efforts is allowed to continue unchallenged, we are assured of continued bread-and-circuses performances: horror at the exploitation, contemptuous pity for the victims, and rage at the perpetrators.

We must use structural analysis and understanding of the root causes of exploitation to effectively combat the exploitation, including the severe forms of exploitation invoked by states in their anti-“slavery” rhetoric and efforts. State framing of the phenomenon of “modern slavery” as the result of violations committed by bad-guy transgressors limits the anti-exploitation methodologies under consideration. This framing points the finger to transnational criminals and looks away from true prevention that would target vulnerability caused by state-supported economic, social, and political structures. The parable of the river urges a more holistic approach: While some responders focus on the rescue efforts directed at the immediately vulnerable, other responders *must* go upstream to the sources to identify the causes and truly prevent the crisis.

States and other anti-“slavery” actors must identify and map out contradictory state incentive structures, including linkages to, and dependence on, systems of exploitation – such as corporatization and cheap labor – that undermine the state’s ability or willingness to address the new slaveries effectively. Further, and perhaps even more challengingly, the anti-“slavery” actors must critically confront and develop strategies to respond to the possibility that the state just may not have the power to create and implement honest and effective anti-“slavery” efforts in the face of the shift of power from states to non-state actors.⁹⁷

To be effective, anti-slavery efforts must focus on *why* as well as *how* the exploitation is conducted and must follow the money and power to identify the beneficiaries. The efforts must identify intervention points, and demonstrate a willingness to make structural economic and political changes to address endemic subordination and vulnerability to exploitation. Such efforts will require the adoption of new holistic methodologies that incorporate the intertwined factors that lead to and maintain severe forms of exploitation. These would include, for example, coordination through the World Trade Organization and regional economic and trade liberalization organizations to decrease or eliminate the contradiction between international trade liberalization and domestic immigration law. This innovation would liberalize the movement of human persons so that they may respond lawfully to trans border economic and other incentives and, while benefiting from human rights protection, receive the

97. Examples are multinational corporations and other powerful non-state actors.

protective national treatment and most favored nation statuses given capital, manufactured goods, and intellectual property under the international trade liberalization regime.⁹⁸

There may be some hope of a more structural approach: in 2017, a new type of anti-“slavery” collaboration/initiative was announced by the U.K. and the U.S.. The two states pledged GB £20M and U.S. \$25M respectively, to a new entity, the Global Fund to End Modern Slavery.⁹⁹ “Incubated” by Global Development Incubator, the entity is described as a “public-private initiative focused on sustainably ending modern slavery by making it economically unprofitable.”¹⁰⁰ Its goal is to raise U.S. \$1.5B in furtherance of that mission.¹⁰¹

However, the new initiative appears to embrace the paradigm of aberration and criminality, albeit with the offering of economic and market-based solutions to combating the exploitation. For example, the CEO of the new fund characterized “modern slavery” as:

[A] crime of economic opportunity. Addressing it in a sustainable way requires a coherent global strategy and mobilisation of resources commensurate with that strategy. This includes close engagement with the private sector as allies and partners. We believe that sustainably ending modern slavery will require market-based solutions and proactive business leadership. There is potential for businesses and investors to drive change like we have never seen before.¹⁰²

It is too early to tell whether this initiative represents a paradigm shift away from mere criminalization and toward targeting the economic causes of vulnerability, with the promise of more effective anti-exploitation methodologies. Unless the Global Fund adopts a more structural approach than the one supported by its state funders, its efforts will be similarly flawed (dishonest and ineffective): a review of its website does not indicate a fundamental evaluation of the economic or other preconditions that lead to today’s slaveries.

States, activists, NGOs, and intergovernmental organizations must address and frame effective responses to the hard questions about the goals of state anti-“slavery” efforts and their priorities (Is it the state and other powerful actors? Is

98. Bravo, *supra* note 20 at 545-616.

99. Press Release, U.S. Dep’t of St., U.S. Awards \$25 Million to the Global Fund to End Modern Slavery (Sept. 14, 2017), <https://www.state.gov/secretary/remarks/2017/09/274110.htm>; Caroline Mortimer, *US and UK pledge millions for largest-ever fund to fight modern day slavery*, INDEPENDENT (Jan. 25, 2018) <http://www.independent.co.uk/news/world/politics/modern-slavery-global-fund-davos-us-uk-government-a8176801.html>.

100. McKinley, *GDI incubating Global Fund to End Modern Slavery, new public-private anti-slavery initiative*, GDI NEWS (Nov. 7, 2017), <http://globaldevincubator.org/gdi-incubating-global-fund-to-end-modern-slavery-new-public-private-anti-slavery-initiative/>.

101. Kieran Guilbert, *‘Game-changing’ anti-slavery fund aims to save millions of lives*, REUTERS (Jan. 25, 2015), <https://www.reuters.com/article/us-davos-slavery-funding/game-changing-anti-slavery-fund-aims-to-save-millions-of-lives-idUSKBN1FE2P6>.

102. Mortimer, *supra* note 100.

it the human being? The human being of *every* nationality, ethnicity, and citizenship, or those of more powerful states?). Further, they must determine whether state efforts mask the primacy of the state and nationalism, while *performing* anti-"slavery."